

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/505,440
Applicant : Eberhard AMMERMAN et al
Filed : August 24, 2004
TC/A.U. : 1611
Examiner : Kyle A. Purdy

Docket No. : 3165-107
Customer No. : 6449
Confirmation No.: 2309

**RESPONSE TO RESTRICTION REQUIREMENT/ELECTION OF SPECIES
REQUIREMENT**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action dated February 22, 2008, the applicants hereby elect Group I, namely claims 1-6 and 11, directed to a synergistic fungicidal mixture. This election is with traverse with respect to the restriction between Groups I, II, III and IV. According to the Examiner, claims 1-4 and 9 encompass the elected invention, but in counsels view, as explained below, all claims in this application encompass the elected invention.

In response to the Election of Species requirement, the applicants hereby elect the species trifloxystrobin. Claims 1, 2, 7, 8, 9, 11, 12 and 13 read on the elected species.

It is believed that the Examiner may have overlooked the requirement in the last line of claim 1 that the prothioconazol of formula I and the further fungicidal compound of formula II-VI are present in a synergistically effective amount. The synergistically effective amount is further

defined in claim 7 with respect to specific ranges of ratios of the prothioconazol to the other fungicidal compounds of formulae II-VI. This relationship is even more clear when it will be noted that claim 7 is dependent upon claim 1. Accordingly, the restriction between Groups I and II is believed to be improper and should be withdrawn.

As far as the differences between Groups I and III and IV are concerned, the Examiner relies upon U.S. patent 6,787,567. However, the special technical feature of all of the claims is synergism of the claimed mixtures. The '567 patent discloses a combination of methoximinoacetamide derivatives of formula (I) and one active compound of Groups (I) to (58), which include trifloxystrobin (12) and prothioconazol (20). No specific mixture of prothioconazol and another fungicidal agent other than methoximinoacetamide is in any way suggested in the '567 patent. The prothioconazol or trifloxystrobin disclosed in the '567 patent is always combined with methoximinoacetamide or derivative thereof formula I. Therefore, it is believed clear that the present claims qualify as having a common special technical feature which is not disclosed by the '567 patent, namely the synergistic combination of prothioconazole and a further fungicide of the specified compounds, and the Restriction Requirement between Groups I and III and IV should also be withdrawn.

Rejoinder of Groups II, III and IV with the elected Group I is believed in order, and according such action is requested.

Early and favorable action on the merits is awaited.

If any additional payment is required, please charge the cost thereof to deposit
account no. 02-2135.

Respectfully submitted,

By

A handwritten signature in black ink, appearing to read 'Robert B. Murray', with a large, stylized loop at the end.

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